IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6712 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDIAN OIL CORPORATION LTD

Versus

ASSISTANT P F COMMISSIONER

Appearance:

1. Special Civil Application No. 6712 of 2003

MR R.P.BHATT, Ld. Senior Counsel with MR MANISH R BHATT for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 18/03/2004

ORAL JUDGEMENT

The present petition is preferred by the petitioner challenging the legality and validity of the order dated 23.4.2003 passed by respondent No.1 in

exercise of his power under Section 7A of Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

2. Heard Mr. R.P.Bhatt, learned Senior Counsel with Mr. M.R.Bhatt for the petitioner and Mr. Mehta for the respondent. Having heard learned counsel appearing for both the parties, it appears there is no dispute on the point that review application under Section 7B is preferred by the petitioner on 5.5.20003 and the same is pending. However, Mr. Bhatt for the petitioner submitted that the said remedy is a illusory remedy and he also submitted even if the Court find that the matter can be considered in the review application, the interim order which has been granted by this Court may be continued for some time and the petitioner has no objection in producing necessary details before the authority in the review proceedings. Mr. Bhatt also submitted that the appropriate observations may be made by the Court so as to enable the petitioner to put forward the case before the authority in the proceedings of review application.

3. On behalf of the respondent Mr. Mehta submitted that the order has been passed under Section 7A in detail and all aspects are considered. Mr. Mehta submitted that the contractors are given contract by the petitioner and the petitioner is having details of contractors and he also submitted that the petitioner being principal employer, it is the duty of the petitioner to ensure that the statutory compliance is made of all relevant provisions including contribution of provident fund etc. Mr. Mehta, therefore, submitted that the matter can be considered by the authority in the review proceedings. However, he submitted that the petitioner may be directed to deposit some amount pending the consideration of the matter in review proceedings.

4. Having considered the above, it appears that when the review application under Section 7B is pending before the authority, it may not be necessary for this Court to examine various contentions which are raised in this petition at this stage. It will be for the petitioner to raise all the contentions available under the law before the authority before whom the review application is pending. When the review application is preferred within stipulated time limit, the details which may be submitted by the petitioner can be examined by the reviewing authority. So far as the liability of the provident fund contribution is concerned, it is true that the petitioner in capacity as the principal employer has to ensure that the statutory compliance of all relevant laws are made

but at the same time examination of the said aspects cannot be finally concluded without joining the contractor and/or without issuing the notice to the contractor. I am not expressing any final view on the said aspects since it will be for the authority before whom the review application is pending to consider all aspects including the aforesaid. Mr. Mehta voiced the grievance that contractors in number of cases are dummy persons and it will not be possible for the provident fund authority to secure their presence and/or to serve the summons. As such, there is no material on record to support the said contentions but, even if it is so, it is for the provident fund authority to verify the same and to adopt the procedure known to law for service of the summons or notice in accordance with law. The said aspects shall be considered by the authority at the appropriate stage while considering the material for review.

5. Under the above circumstances when the review application is pending, I find that the petitioner should be relegated to pursue the remedy of review and until the review application is decided, the ad interim relief granted earlier can be continued for some time and the authority before whom the review application is pending can be directed to consider the same within some reasonable time.

6. Considering the above, I find that the following directions shall meet with the ends of justice:

(i) The petitioner shall make appropriate representation if required before the reviewing authority in support of the review application already filed on 5.5.2003, preferably within three weeks from today.

(ii) After the submissions are made by the petitioner, or otherwise the reviewing authority shall examine the same in accordance with law and necessary steps to be if required for service of summons to the contractor, shall be taken.

(iii) After the procedural aspect is completed, the record shall be examined and reviewing authority shall pass the appropriate orders after giving opportunity to the petitioner or the concerned contractor as the same may be.

(iv) The aforesaid exercise shall be completed as early as possible, preferably within period of

four months from the receipt of the order of this Court and until the final decision is rendered, the ad interim relief granted by this Court earlier on 12.5.2003 shall continue to remain under operation.

Petition is disposed of in terms of the aforesaid directions. Rule made absolute to the aforesaid extent. No costs.

(Jayant Patel,J)

Jayanti*